BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Sheris Marita Gafford** 10210 Basalt Lane Mentone, CA 92359 Registered Nurse License No. 468446 Respondent	Case No. 2008-49

DECISION AND ORDER

The foregoing Stipulated Settlement for Public Reprimand is hereby adopted as the Decision and Order of the Board of Registered Nursing, Department of Consumer Affairs. A letter of public reprimand shall issue from the Executive Officer of the Board of Registered Nursing.

This Decision shall become effective on **June 5, 2009**.

IT IS SO ORDERED **May 5, 2009**.

Susanne Phillips, MSN, RN, FNP-BC
President
Board of Registered Nursing
Department of Consumer Affairs
State of California

EDMUND G. BROWN JR., Attorney General
of the State of California
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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: SHERIS MARITA GAFFORD 10210 Basalt Lane Mentone, CA 92359 Registered Nurse License No. 468446 Respondent.	Case No. 2008-49 OAH No. L2008100283 **STIPULATED SETTLEMENT FOR ISSUANCE OF PUBLIC REPRIMAND**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Registered Nursing of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement for Issuance of Public Reprimand, which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of the Board of Registered Nursing. She brought this action solely in her official capacity and is represented in this matter by Scott J. Harris, Deputy Attorney General, and Kimberley J. Baker-Guillemet, Deputy Attorney General for Edmund G. Brown Jr., Attorney General of the State of California.

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2. Sheris Marita Gafford (Respondent) is represented in this proceeding by attorney Paul Spackman, whose address is:

Iungerich & Spackman
28441 Highridge Rd #201
Rolling Hills Est, CA, 90274-4869

3. On or about August 31, 1991, the Board of Registered Nursing issued Respondent Registered Nurse License No. 468446. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 2008-49 and will expire on January 31, 2009, unless renewed.

JURISDICTION

4. Accusation No. 2008-49 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 23, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-49 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2008-49. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent understands and agrees that this Stipulated Settlement for Issuance of Public Reprimand, and corresponding Letter of Public Reprimand are final and may not be challenged or appealed.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to

reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands the nature of the charges alleged in Accusation No. 2008-49 and agrees that, if proven, such charges would constitute cause for imposing discipline upon her Registered Nurse License.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent hereby gives up her right to contest those charges and agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this or any other proceeding in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect and, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement for Issuance of Public Reprimand, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 468446 issued to Respondent Sheris M. Gafford shall be publically reprimanded by way of letter from the Executive Officer pursuant to Business and Professions Code section 495. The Letter of Public Reprimand will issue as set forth above and shall be in the same form as the letter attached as Exhibit B.

ACCEPTANCE

I have carefully read the Stipulated Settlement for Issuance of Public Reprimand. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement for Issuance of Public Reprimand voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 1/22/09

SHERIS MARITA GAFFORD
Respondent

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I have read and fully discussed with Respondent Sheris Marita Gafford the terms and conditions and other matters contained in the above Stipulated Settlement for Issuance of Public Reprimand. I approve its form and content.

DATED: Jan. 22, 2009

PAUL SPACKMAN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement for Issuance of Public Reprimand is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 1/22/09

EDMUND G. BROWN JR., Attorney General
of the State of California

GLORIA A. BARRIOS
Supervising Deputy Attorney General

KIMBERLEY BAKER-GUILLEMET
Deputy Attorney General

SCOTT J. HARRIS
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2006601493
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Exhibit A

Accusation No. 2008-49

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of the State of California
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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: SHERIS MARITA GAFFORD 10210 Basalt Lane Mentone, CA 92359 Registered Nurse License No. 468446 Respondent.	Case No. 2008-49 **ACCUSATION**

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about August 31, 1991, the Board of Registered Nursing issued Registered Nurse License No. 468446 to Sheris Marita Gafford (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section

references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

. . . .

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it."

7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

9. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

"(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL SUMMARY

11. Patient D.S., an 80 year old male, was admitted to Kaiser Permanente in Fontana ("Kaiser") on January 17, 2004, for diagnostic surgery on a bifrontal mass following a CT scan. Patient D.S. underwent a left frontal craniotomy with partial excision of a tumor for biopsy and decompression on January 18, 2004.

12. Patient D.S. was admitted to Kaiser with a history of confusion, difficulty walking, incontinence, and slurred speech since approximately late December. Prior to that, he was fully independent, drove, and acted as care giver to his wife.

13. On or about January 18, 2004, at approximately 0530, while in the intensive care unit, Patient D.S. pulled out his breathing tube. At approximately 1600, Patient D.S. was transferred to a surgical floor. Per patient restraint orders, bilateral soft wrist restraints were applied to prevent interfering with dressings and/or devices and pulling out tubes.

14. On or about January 19, 2004, at approximately 0300, Patient D.S. was found out of bed and sitting in a chair. He stated that he wanted to go home. He had pulled out his IV and Foley catheter. He had received a dose of morphine at approximately 1700 for a headache. Patient D.S. was subsequently given a sedative to help prevent him from getting out of bed. Restraints were not utilized on January 19, 2004.

15. On or about January 20, 2004, at approximately 1830, the evening shift RN applied a Posey vest restraint on Patient D.S. after noting that he was confused and tried to get out of bed. The vest was used without a condition-specific order for use. The evening shift RN signed off at 2300 and noted that the vest was off.

16. On or about January 20, 2004, at approximately 2400, Respondent noted that the vest restraint was on Patient D.S. Respondent noted the continued use of the vest from the start of her shift until 0300.

17. On or about January 21, 2004, at approximately 0350, Patient D.S. was found on the floor of his room without a pulse and not breathing. The Posey restraint vest was off. Patient D.S. could not be resuscitated. The time of death was recorded at 0417.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

18. Respondent's license is subject to discipline pursuant to section 2761, subdivision (a)(1), for unprofessional conduct and gross negligence as defined by California Code of Regulations, title 16, sections 1442, 1443, and 1443.5, in that Respondent demonstrated an extreme departure from the standard of care by her repeated failure to provide the requisite degree of nursing care needed to Patient D.S. as follows:

(a) Respondent failed to effectively formulate a care plan for Patient D.S. for the prevention of injury in that the restraint vest alone did not meet the patient's degree of need considering his previous dangerous behavior of pulling lines out and getting out of bed, combined with his extreme risk for fall and/or self-injury due to weakness, lack of judgment, disorientation and confusion.

(b) Respondent failed to document the following: effective alternatives to the Posey vest restraint for fall prevention such as medication/sedation or a sitter/family member, documentation of offering fluids or a urinal to the patient, documentation to support her report of checking on the patient every 15-20 minutes, documentation that the side rails were up, or a narrative regarding the patient's prior condition and behavior and/or a justification regarding the continued use of the restraint vest only.

(c) Respondent altered documentation such that original entries could not be ascertained for the patient's last measured heart rate or for the resuscitation records, which included the time the patient was found, the time the code was called, and the time of the first intervention.

(d) Respondent failed to accurately report the disposition of the restraint vest at the time of death.

(e) Respondent failed to notify the coroner of the patient's death, which met

the criteria for a reportable death.

(f) Respondent failed to properly apply and use the restraint vest on Patient D.S. in that the patient did not remain in the restraint despite Respondent's self-reported high degree of observation, reorientation and adjustment just prior to the patient being found on the floor of his room. Respondent continued to use the restraint vest without a condition-specific order for use or documentation that the patient's behavior indicated continued use.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. 468446 issued to Sheris Marita Gafford.

2. Ordering Sheris Marita Gafford to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 8/14/07

RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant